APPENDIX.

Trade-Mark Act of February 20, 1905.

Section 5 (U. S. C. Tit. 15, Sec. 85):

That no mark by which the goods of the owner of the mark may be distinguished from other goods of the same class shall be refused registration as a trade-mark on account of the nature of such mark * * *

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Provided, That trade-marks which are identical with a registered or known trade-mark owned and in use by another and appropriated to merchandise of the same descriptive properties, or which so nearly resemble a registered or known trade-mark owned and in use by another and appropriated to merchandise of the same descriptive properties as to be likely to cause confusion or mistake in the mind of the public or to deceive purchasers shall not be registered:

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And provided further, That nothing herein shall prevent the registration of any mark used by the applicant or his predecessors, or by those from whom title to the mark is derived, in commerce with foreign nations or among the several states or with Indian tribes which was in actual and exclusive use as a trade-mark of the applicant, or his predecessors from whom he derived title, for ten years next preceding February twentieth, nineteen hundred and five:

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Section 16 (U. S. C. Tit. 15, Sec. 96):

That the registration of a trade-mark under the provisions of this act shall be prima facie evidence of ownership. Any person who shall, without the consent of the owner thereof, reproduce, counterfeit, copy, or colorably imitate any such trade-mark and affix the same to merchandise of substantially the same descriptive properties as those set forth in the registration, or to labels, signs, prints, packages, wrappers, or receptacles intended to be used upon or in connection with the sale of merchandise of substantially the same descriptive properties as those set forth in such registration, and shall use, or shall have used, such reproduction, counterfeit, copy, or colorable imitation in commerce among the several States, or with a foreign na-

tion, or with the Indian tribes, shall be liable to an action for damages therefor at the suit of the owner thereof; and whenever in any such action a verdict is rendered for the plaintiff, the court may enter judgment therein for any sum above the amount found by the verdict as the actual damages, according to the circumstances of the case, not exceeding three times the amount of such verdict, together with the costs.

Section 19 (U. S. C. Tit. 15, Sec. 99):

That the several courts vested with jurisdiction of cases arising under the present act shall have power to grant injunctions, acording to the course and principles of equity, to prevent the violation of any right of the owner of a trade-mark registered under this act, on such terms as the court may deem reasonable; and upon a decree being rendered in any such case for wrongful use of a trade-mark the complainant shall be entitled to recover, in addition to the profits to be accounted for by the defendant, the damages the complainant has sustained thereby, and the court shall assess the same or cause the same to be assessed under its direction. The court shall have the same power to increase such damages, in its discretion, as is given by section sixteen of this act for increasing damages found by verdict in actions of law; and in assessing profits the plaintiff shall be required to prove defendant's sales only; defendant must prove all elements of cost which are claimed.

FEDERAL RULES OF CIVIL PROCEDURE.

Rule 52(a):

EFFECT. In all actions tried upon the facts without a jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court.